

### REMARKS/ARGUMENTS

This paper is intended as a full and complete response to the Office Action dated November 17, 2005, having a shortened statutory period for response set to expire on February 17, 2006.

Claims 1, 5, 9, 12, 15, 17, 20, 23, 24, 28, and 35 are amended in the Application.

Claim 19 has been withdrawn in the Application

Claims 1-18 and 20-37 are pending in the Application.

#### I. Claims Objections

The Office Action objected to Claims 1, 9, 17, 20, 23, and 28 for informalities.

Applicant believes that Claims 1, 9, 17, 20, 23, and 28 have been amended in such a manner to obviate the informalities. Reconsideration of the objection is respectfully requested in view of the amended Claims. Applicant believes that no new matter has been added with any amendments that have been made.

#### II. Claim Rejections 35 USC § 112

The Office Action rejected claims 1, 5, 9, 12, 15, 20, 24, and 35 under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant believes that Claims 1, 5, 9, 12, 15, 20, 24, and 35 have been amended in such a manner to obviate the informalities. Reconsideration of the rejection is respectfully requested in view of the amended Claims. Applicant believes that no new matter has been added with any amendments that have been made.

#### IV. Claim Rejections 35 USC § 103

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The Office Action rejected Claims 1-6, 8-25 and 27-37 under 35 USC § 103(a) as being anticipated by *Lumpur, K* (2001).

*Lumpur, K* does not disclose an invention that Tishcon USA has reduced to practice. The article *Lumpur, K* does not accurately reflect the ideas or products that Tishcon sells or manufactures. Evidence of this can be found in Attachment A, a printout of the website of Tishcon (<http://www.tishcon.com> last access 3/16/2006). As shown in the second paragraph, "We are the source for a full and complete line of vitamin and health supplements – tablets, softgels, hard gelatin capsules and powders, for generic and proprietary products..." (<http://www.tishcon.com> last access 3/16/2006). Nowhere in this website, nor through a conversation with Tishcon representatives could a beverage made by Tishcon be ascertained.

Applicant's Application deals with a perioperative multivitamin protein beverage (Applicant's Application Claim 1). It does not associate itself with tablets, softgels, hard gelatin capsules and powders. Therefore it would not have been obvious for a person having ordinary skill in the art to manufacture a perioperative multivitamin protein beverage and additive for use in preparing an individual for fast surgical recovery.

Claims 2-6, 8-25 and 27-37 depend upon independent Claim 1, and therefore includes all of the limitations thereof. Since Applicant believes that independent Claim 1 is patentably distinct from *Lumpur, K*, Claims 2-6, 8-25 and 27-37 are patentably distinct from *Lumpur, K* as well. Applicant believes no new subject matter has been added. Reconsideration of the rejection to the Claims in view of the remarks is respectfully requested.

The Office Action rejected Claims 7 and 26 under 35 USC § 103(a) as being unpatentable over *Lumpur, K* (2001) as applied to Claims 1-6, 8-25, and 27-37 above, and further in view of *Bell et al.* (US 5,968,896 A).

In order for two references to be combined in a such a manner that a 35 USC § 103(a) rejection is sustained there needs to be some inherent teaching that would cause one of ordinary skill in the art to determine a reasonable expectation of success in producing the claimed invention. It would not have been *prima facie* obvious for *Bell et al.* to be combined with *Lumpur, K*.

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*Lumpur, K* deals with tablets, softgels, hard gelatin capsules and powders as stated above. *Bell et al.* deals the preferred form of "non-baked extruded nutritional bar" (*Bell et al.* Column 2 lines 58-64). It is stated in *Bell et al.* that the "nutritional supplement can be made in a variety of forms, such as baked goods (c.g., cookies, brownies, fudge, cake, breads, biscuits, crackers), puddings, confections (i.e., candy), snack foods (e.g., pretzels, chips), ice cream, frozen confections and novelties, or non-baked, extruded food products such as bars" (*Bell et al.* Column 2 lines 58-64).

It is not obvious for one skilled in the art to combine non-baked nutritional bars with tablets, softgels, hard gelatin capsules and powders to obtain a liquid perioperative multivitamin protein beverage.

In addition, Claims 7 and 26 depend upon independent Claim 1, and therefore includes all of the limitations thereof. Since Applicant believes that independent Claim 1 is patentably distinct from *Lumpur, K* in view of *Bell et al.*, Claims 7 and 26 are patentably distinct from *Lumpur, K* in view of *Bell et al.* as well. Applicant believes no new subject matter has been added. Reconsideration of the rejection to the Claims in view of the remarks is respectfully requested.

Applicant appreciates the Examiner's time and attention to this matter. Applicants believe Claims as now provided are in condition for allowance. Reconsideration of this application is respectfully requested. The Applicant invites the Examiner to contact the Applicant's representatives (713.403.7411) if any questions concerning this Application arise.

Respectfully submitted,



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